

IN THE SENATE

SENATE BILL NO. 1383, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS;  
AMENDING SECTION 42-1203, IDAHO CODE, TO PROVIDE THAT SPECIFIED DUTIES RELATING TO DITCHES, CANALS AND CONDUITS REQUIRE REASONABLE CARE ONLY AND DO NOT IMPOSE STRICT LIABILITY OR ENLARGE LIABILITY OF OWNERS, TO PROVIDE THAT OWNERS SHALL NOT BE LIABLE FOR SPECIFIED DAMAGES OR INJURIES AND TO PROVIDE THAT SPECIFIED LAW SHALL NOT BE CONSTRUED TO IMPAIR ANY DEFENSE THAT AN OWNER OR CONSTRUCTOR OF A DITCH, CANAL, WORKS OR OTHER AQUEDUCT MAY ASSERT IN A CIVIL ACTION; AND AMENDING SECTION 42-1204, IDAHO CODE, TO PROVIDE THAT SPECIFIED DUTIES RELATING TO DITCHES, CANALS, WORKS AND AQUEDUCTS REQUIRE REASONABLE CARE ONLY AND DO NOT IMPOSE STRICT LIABILITY OR ENLARGE LIABILITY OF OWNERS, TO PROVIDE THAT OWNERS AND CONSTRUCTORS SHALL NOT BE LIABLE FOR SPECIFIED DAMAGES OR INJURIES AND TO PROVIDE THAT SPECIFIED LAW SHALL NOT BE CONSTRUED TO IMPAIR ANY DEFENSE THAT AN OWNER OR CONSTRUCTOR OF A DITCH, CANAL, WORKS OR OTHER AQUEDUCT MAY ASSERT IN A CIVIL ACTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1203, Idaho Code, be, and the same is hereby amended to read as follows:

42-1203. MAINTENANCE OF EMBANKMENTS. The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water. The duties referenced in this section, whether statutory or common law, require reasonable care only, and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owner or owners of any irrigating ditch, canal or conduit. The owners or constructors of such ditches, canals, works or other aqueducts, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by: (1) The diversion or discharge of water into a ditch, canal or conduit by a third party without the permission of the owner or owners of the ditch, canal or conduit; (2) Any other act or omission of a third party, other than an employee or agent of the owner or owners of the ditch, canal or conduit; or (3) An act of God, including fire, earthquake, storm or similar natural phenomenon. The provisions of this section shall not be construed to impair any defense that an owner or constructor of a ditch, canal, works or other aqueduct may assert in a civil action.

1       SECTION 2. That Section 42-1204, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3       42-1204. PREVENTION OF DAMAGE TO OTHERS. The owners or constructors of  
4 ditches, canals, works or other aqueducts, and their successors in interest,  
5 using and employing the same to convey the waters of any stream or spring,  
6 whether the said ditches, canals, works or aqueducts be upon the lands owned  
7 or claimed by them, or upon other lands, must carefully keep and maintain the  
8 same, and the embankments, flumes or other conduits, by which such waters are  
9 or may be conducted, in good repair and condition, so as not to damage or in  
10 any way injure the property or premises of others. The duties referenced in  
11 this section, whether statutory or common law, require reasonable care only,  
12 and shall not be construed to impose strict liability or to otherwise enlarge  
13 the liability of the owner or owners of any irrigating ditch, canal, works or  
14 other aqueduct. The owners or constructors of such ditches, canals, works  
15 or other aqueducts, while responsible for their own acts or omissions, shall  
16 not be liable for damage or injury caused by: (1) The diversion or discharge  
17 of water into a ditch, canal, works or other aqueduct by a third party with-  
18 out the permission of the owner or owners of the ditch, canal, works or other  
19 aqueduct; (2) Any other act or omission of a third party, other than an em-  
20 ployee or agent of the owner or owners of the ditch, canal, works or other  
21 aqueduct; or (3) An act of God, including fire, earthquake, storm or similar  
22 natural phenomenon. The provisions of this section shall not be construed  
23 to impair any defense that an owner or constructor of a ditch, canal, works  
24 or other aqueduct may assert in a civil action. The owners or constructors  
25 have the right to enter the land across which the right-of-way extends, for  
26 the purposes of cleaning, maintaining and repairing the ditch, canal or con-  
27 duit, and to occupy such width of the land along the banks of the ditch, canal  
28 or conduit as is necessary to properly do the work of cleaning, maintain-  
29 ing and repairing the ditch, canal or conduit with personnel and with such  
30 equipment as is commonly used, or is reasonably adapted, to that work. The  
31 right-of-way also includes the right to deposit on the banks of the ditch or  
32 canal the debris and other matter necessarily required to be taken from the  
33 ditch or canal to properly clean and maintain it, but no greater width of land  
34 along the banks of the canal or ditch than is absolutely necessary for such  
35 deposits shall be occupied by the removed debris or other matter.